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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/711,687	09/30/2004	James W. LOWRY		5686

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EXAMINER

GEHMAN, BRYON P

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 04/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

ED

Office Action Summary	Application No.	Applicant(s)	
	10/711,687	LOWRY, JAMES W.	
	Examiner	Art Unit	
	Bryon P. Gehman	3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>12/17/04</u> . | 6) <input type="checkbox"/> Other: _____ |

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1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-5, 11 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Munroe (3,799,382). Disclosed is a packaging system for shipping and displaying multiple layers of vertically stacked product containers, the system comprising a plurality of layers of vertically stacked product containers (boxes, see column 1, lines 6-22) as a structural component of the system, a plurality of trays (40), each tray comprising a center panel having an array of openings (44) disposed therein for receiving and restricting the movement of the product containers, each tray further comprising corner openings (48) and vertical support posts (30) inserted through the corner openings to lock the trays together.

As to claim 2, a bottom most tray is disclosed.

As to claims 3 and 11, short side panels of the trays are disclosed.

As to claim 4, a pallet (15) is disclosed.

As to claim 5, a top cap (50) is disclosed.

As to claim 13, each tray rests on the tops of a layer of product containers.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Munroe in view of Lehr et al. (3,961,707). Lehr et al. discloses a top cap (14) for a packaging system including a center panel and short side panels extending from the center panel. To modify the top cap of Munroe to comprise short side panels as in Lehr et al. would have been obvious in order to reinforce the top cap.

As to claim 7, Munroe discloses banding (35 and 52) disposed around the top cap and pallet.

As to claim 8, Lehr et al. further disclose disposing plastic film (50) to protect the contents from dust and damage (see column 4, line 62 through column 5, line 6).

As to claim 9, Lehr et al. disclose providing vertical support posts as hollow tubes as one of many known types. To employ hollow posts as opposed to the solid posts disclosed by Munroe would have been an obvious substitution of post types recognized in the shipping tray art.

5. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Munroe in view of Frysinger et al. (5,647,284). Frysinger et al. provide trays (20) made from corrugated board. To employ corrugated board as opposed to plastic would have been an obvious substitution of known materials each employed in the field.

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6. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Munroe in view of Garbe Jr. (3,627,122). Garbe Jr. discloses stacked trays provided with decorated indicia on their side panels. To modify the tray side panels of Munroe employing indicia as taught by Garbe Jr. would have been obvious in order to provide information relative to the contents of the trays to a consumer looking at the packaging system.

7. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shapiro (3,039,881) in view of Munroe. Shapiro discloses a packaging system having product containers (16) of a larger diameter at the top than at the bottom and wherein the openings in the receiving center panel are larger than the bottoms of the product containers, but smaller than the tops of the product containers. To modify the packaging system of Shapiro employing the corner opening and vertical post teaching of Munroe would have been obvious in order to better protect the product containers of Shapiro from damage in shipping, as suggested by Munroe.

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Shown are packaging systems including stacked trays and vertical posts.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryon P. Gehman whose telephone number is (571)

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272-4555. The examiner can normally be reached on Monday through Wednesday from 5:30am to 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu, can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Bryon P. Gehman
Primary Examiner
Art Unit 3728

BPG